IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5167 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAMA HANIFBHAI NANUBHAI

Versus

STATE OF GUJARAT 3RD SPECIAL LAND ACQUISITION

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SJ DAVE, AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated passed by the District Magistrate, Bhavnagar and he has been declared as

dangerous person.

2. It is a settled principles of law that in order to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors. reported in 1995 (2) GLR 1268.

3. Ms Subhadraben Patel has restricted her arguments only on the point that there is improper exercise of powers under Section 9 (2) of the PASA Act as the statements of three witnesses under Section 9 (2) of the Act have been recorded by the authority on 29-2-2000 and verified by the detaining authority on 14-3-2000 and the order of detention has been passed on 15-3-2000. Learned counsel for the petitioner has drawn my attention towards the above statement and argued that the authority has only mentioned " verified contents". As per the arguments of the learned counsel for the petitioner this is not verification in the eye of law. In support of this contention, learned counsel for the petitioner has relied upon a decision reported in 1996 (1) G.L.H. Jakirbhai Rahimbhai Nagori v. District Magistrate, Mehsana & Others wherein at head note the Court has held as under :

> "Claim of privilege by the detaining authority in respect of statements of witnessesThe Superintendent of Police, who examined the statements at the instance of detaining authority wrote below every statement one word "verified"- Held that claim of privilege made by the detaining authority on the basis of such endorsement was not genuine- Continued detention illegal- Observations of Division Bench in the case of Koli Ashwin v. State of Gujarat in Special Criminal Application No.1812 of 1993

relied on."

4. In view of the above discussion, the order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

5. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 15-3-2000 passed against the detenu is hereby quashed. The petitioner- detenu Shama Hanifbhai Nanubhai is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai